

268 NLRB No. 101

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D--1218  
Bloomington, IN

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL 383, OPERATIVE PLASTERERS AND  
CEMENT MASONS INTERNATIONAL  
ASSOCIATION, AFL--CIO

and

Case 25--CD--224

W. E. O'NEIL CONSTRUCTION COMPANY

and

LOCAL 741, LABORERS' INTERNATIONAL  
UNION OF NORTH AMERICA

DECISION AND ORDER

Upon a charge filed by the Company on 5 November 1982, the General Counsel of the National Labor Relations Board issued a complaint 23 August 1983 alleging that Local 383, the Respondent, has been engaging in unfair labor practices within the meaning of Sections 8(b)(4)(D) and 2(6) and (7) of the National Labor Relations Act.

The complaint alleges that the Respondent violated the Act by failing and refusing to comply with the terms of the Board's Decision and Determination of Dispute in a 10(k) proceeding.<sup>1</sup> Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

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<sup>1</sup> Local 383, Plasterers (O'Neil Construction Co.), 266 NLRB No. 148 (May 16, 1983).

On 16 September 1983 the General Counsel filed a Motion for Summary Judgment. On 22 September 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

Pursuant to Section 10(k) of the Act, following a charge filed by the Company on 5 November 1982 alleging that the Respondent violated Section 8(b)(4)(D) of the Act, a hearing was held on 22 November 1982. On 16 May 1983 the Board issued a Decision and Determination of Dispute finding there was reasonable cause to believe Section 8(b)(4)(D) had been violated by the Respondent and that there was no agreed-upon method for the voluntary settlement of the dispute to which all parties were bound. Concluding therefore that it was not precluded from making a determination of the merits of the dispute within the meaning of Sections 8(b)(4)(D) and 10(k) of the Act, the Board decided that the employees represented by Local 741, Laborers' International Union, were entitled to the work in dispute, rather than employees represented by the Respondent. The complaint alleges that the Respondent has failed to notify the Regional Director for Region 25, in writing, whether or not it will refrain from forcing or requiring the Company, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is

shown. The complaint states that, unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated 8 September 1983, notified the Company that, unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.<sup>2</sup>

On the entire record, the Board makes the following:

#### Findings of Fact

##### I. Jurisdiction

The Company, an Illinois operation, is engaged in the business of general contracting. During the past year, the Company purchased materials from outside the State having a value of \$50,000. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

##### II. Labor Organizations Involved

Local 383, Operative Plasterers and Cement Masons International Association, AFL--CIO, and Local 741, Laborers' International Union of North America, are labor organizations within the meaning of Section 2(5) of the Act.

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<sup>2</sup> In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being without precedential value.

### III. The Unfair Labor Practices

#### A. Background and Facts of the Dispute

During the fall of 1982 W. E. O'Neil Construction Company served as the general contractor on the Jordan Hall project, a six-story addition to a laboratory and classroom building for biological sciences located in Bloomington, Indiana. It was responsible for all the finishing work, including the breaking of wall ties and the plugging of holes left by the ties. Pursuant to a collective-bargaining agreement negotiated with the Laborers' International Union of North America, the Company assigned the work of removing wall ties and the patching of holes left by such removal to employees represented by Local 741 of the Laborers' International Union.

On 3 November 1982, the business agent for Local 383 approached the project manager for the Jordan Hall project to protest the fact that laborers from Local 741 were performing the wall tie removal work. The business agent stated to the project manager: "You have work here for the Cement Finishers and you have the Laborers doing it and I can't control my work without a bargaining agreement." When this attempt to secure the work for Local 383 members failed, Local 383 began picketing at the site. The picketing continued from 3 November to 5 November 1982.

#### B. The Determination of Dispute

On 16 May 1983, the Board issued its Decision and Determination of Dispute assigning the work of removing wall ties and plugging, grouting, or other patching of holes left by such removal at the Jordan Hall construction site in Bloomington, Indiana, to employees represented by Local 741 of the Laborers' International Union. The Board also found that Local 383 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or

require W. E. O'Neil Construction Company to award the disputed work to employees which it represents.

C. The Respondent's Refusal To Comply

In addition to the picketing activity engaged in between 3 and 5 November 1982, the Respondent, since 16 May 1983, has refused, and continues to refuse, to comply with the Board's Decision and Determination of Dispute by not notifying the Regional Director for Region 25, in writing, whether or not it will refrain from forcing or requiring the Company, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with the determination.

On the entire record, we find, as described above, that the Respondent's conduct in seeking to force or require the assignment of the work in dispute to employees represented by it, rather than to employees represented by the Laborers' International Union, and the Respondent's refusal to comply with the Board's Decision and Determination of Dispute violated Section 8(b)(4)(D) of the Act.<sup>3</sup>

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(D) of the Act, we shall

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<sup>3</sup> Longshoremen ILA Local 1410 (Employer-Members of Mobile Steamship), 242 NLRB 807 (1979).

order that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### Conclusions of Law

1. W. E. O'Neil Construction Company is an employer within the meaning of Section 2(6) and (7) of the Act.

2. Local 383, Operative Plasters and Cement Masons International Association, AFL--CIO, and Local 741, Laborers' International Union of North America, are labor organizations within the meaning of Section 2(5) of the Act.

3. By refusing to comply with the Board's Decision and Determination of Dispute and by attempting to force or require the Company to assign the work of removing wall ties and plugging, grouting, or other patching of holes left by such removal at the Jordan Hall construction site in Bloomington, Indiana, to employees represented by it, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(D) of the Act.

4. These actions are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

The National Labor Relations Board orders that the Respondent, Local 383, Operative Plasterers and Cement Masons International Association, AFL--CIO, Ellettsville, Indiana, its officers, agents, and representatives, shall

1. Cease and desist from refusing to comply with the Board's Decision and Determination of Dispute and threatening, coercing, or restraining W. E. O'Neil Construction Company where an object is to force or require W. E. O'Neil Construction to assign the work of removing wall ties and plugging,

grouting, or other patching of holes left by such removal at the Jordan Hall construction site in Bloomington, Indiana, to employees it represents rather than to employees represented by Local 741, Laborers' International Union.

2. Take the following affirmative action, necessary to effectuate the policies of the Act.

(a) Post at its business offices and meeting halls copies of the attached notice marked "'Appendix.'"<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 25 signed copies of such notices for posting by the Company, if willing, in places where notices to employees are customarily posted.

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<sup>4</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

30 January 1984

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Donald L. Dotson, Chairman

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Don A. Zimmerman, Member

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Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD



## APPENDIX

## NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to comply with the Board's Decision and Determination of Dispute awarding the work of removing wall ties and plugging, grouting, or other patching of the holes left by such removal at the Jordan Hall construction site in Bloomington, Indiana, to employees of W. E. O'Neil Construction Company represented by Local 741 of the Laborers' International Union.

WE WILL NOT threaten, coerce, or restrain W. E. O'Neil Construction Company to assign the wall ties removal and holepatching work to employees represented by us rather than to employees represented by Local 741.

LOCAL 383, OPERATIVE PLASTERERS  
AND CEMENT MASONS INTERNATIONAL  
ASSOCIATION, AFL--CIO

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(Labor Organization)

Dated ----- By -----  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Minton-Capehart Federal Building, Room 238, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, Telephone 317--269--7413.